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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections 11 and 13)
of the Cable Television Consumer)
Protection and Competition Act of 1992)

MM Docket No. 92-264

Horizontal and Vertical Ownership)
Limits, Cross-Ownership Limitations)
and Anti-Trafficking Provisions)

COMMENTS OF
AFFILIATED REGIONAL COMMUNICATIONS, LTD.

Affiliated Regional Communications, Ltd. ("ARC") submits these comments in response to the Commission's Further Notice of Proposed Rulemaking ("Further Notice") in this proceeding. Exclusion of local and regional programming services from any channel occupancy limit will encourage cable operators to continue to invest in and carry those services, which clearly serve the public interest.

ARC holds ownership interests in six regional sports programming services which feature coverage of sports events involving professional, collegiate and other teams based in their respective regions, as well as other sports-related programming of regional and local interest.¹ The development and growth of regional sports networks have contributed substan-

¹ See ARC's Comments in this proceeding at 1-3 and Exhibits 1 and 2 for a more complete description of ARC's regional and other programming interests and of the geographic regions in which each service is marketed.

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tially to the diversity of viewing choices available to consumers. See, e.g., Competition, Rate Deregulation And the Commission's Policies Relating to the Provision of Cable Television Service ("Report to Congress"), 5 FCC Rcd. 4962, 4966 n.8 (1990) (regional sports services have been a "primary growth area" in cable programming). Although other regulations already adopted by the Commission may inhibit the growth of regional sports networks, the Commission's tentative decision in this proceeding to exclude regional programming services from the channel occupancy limits may restore some incentive for cable operator investment in and carriage of those services.

The Commission proposes to exclude local and regional cable programming services from any channel occupancy limits adopted in this proceeding in order "to encourage continued MSO investment in the development of local and regional networks." Further Notice at ¶219. Exclusion of regional sports programming services from the channel occupancy limits will serve the public interest. Specifically, such exclusion will further several fundamental Congressional objectives underlying the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") by promoting: (a) a diversity of viewing choices for consumers; (b) development of programming responsive to local needs and interests; and (c) the continuation and growth of locally originated

programming. This exclusion also is necessary to offset the effects of other Commission regulations which discourage cable investment in and carriage of these services.

A. Providing Diversity Of Views

First, in adopting the 1992 Cable Act, Congress sought to ensure "the availability...of a diversity of views and information" to cable subscribers. 1992 Cable Act, §2(b)(1). The Commission has acknowledged that the development and growth of regional sports programming services have contributed substantially to the overall increase in the diversity of cable programming available to consumers. Report to Congress, 5 FCC Rcd. at 4966 n.8. Moreover, the record developed in response to the Commission's sports programming migration Notice of Inquiry, PP Docket No. 93-21, FCC 93-77 (rel. Feb. 9, 1993), confirms that regional sports networks have added substantially to the variety of programming available to viewers by covering new and different sports which traditionally have not received coverage from broadcast stations and national cable networks. See Interim Report, PP Docket No. 93-21, FCC 93-33 (rel. July 1, 1993) ("Interim Report"), at ¶67 (citing record evidence that "regional cable sports networks provide coverage of a wide variety of previously untelevised professional and amateur sporting events"). Regional networks also add to the diversity of viewing choices available to consumers by providing coverage of events involv-

ing smaller collegiate athletic conferences, high school teams and other amateur athletic conferences which otherwise receive little or no television exposure. Id. at ¶13.

B. Responding To Local Needs And Tastes

Second, the Commission expressly has found that local and regional programming services "are responsive to the needs and tastes of local audiences." Further Notice at ¶219. The Commission's conclusion is particularly applicable to regional sports networks. As the Supreme Court has recognized, live coverage of "outstanding local events [such] as community concerts, civic meetings, local sports events, and other programs of local consumer and social interest" serves the public interest. United States v. Midwest Video Corp., 406 U.S. 649, 668-69 (1972), quoting National Broadcasting Co. v. United States, 319 U.S. 190, 203 (1943) (emphasis added). The Commission's Interim Report confirms that regional sports networks have "been particularly beneficial to collegiate athletics and other amateur sports" within their regions "by telecasting events that would not otherwise be shown." Interim Report at ¶13.

Numerous commenters in the sports migration proceeding described substantial tangible benefits arising from regional cable network coverage of local sports events. For example, the Interim Report cites comments submitted by the Texas Special Olympics which describe the benefits of tele-

vision coverage provided by Home Sports Entertainment ("HSE"), one of ARC's regional sports networks:

HSE's coverage has brought the Special Olympics to an entirely different audience (i.e. sports viewers) than that reached by traditional broadcast news coverage, increasing public awareness of the Special Olympics and recognition of the athletic achievements of the participants in the Summer Games. In addition, HSE's coverage has improved our recruitment of corporate sponsors for the Games. Finally, HSE's coverage of the Summer Games has allowed participants to see themselves in competition, rewarding their efforts and motivating them to continue to improve their athletic skills.

Comments of Texas Special Olympics, filed Mar. 29, 1993 in PP Docket No. 93-21, at 2.

Local high school and small collegiate athletic conferences, which traditionally have received little or no television coverage on local broadcast stations or national cable networks, also derive substantial benefits from television coverage provided by regional sports networks. See, e.g., Comments of Colorado Athletic Conference, filed Mar. 29, 1993 in PP Docket No. 93-21, at 3 (conference member schools "which generally are smaller colleges and universities without substantial state funding, receive significant benefits from such increased television exposure in their efforts to recruit students"). Thus, regional sports networks respond "to the needs...of local audiences" not only through their programming, but also by providing opportunities for exposure and community outreach to local schools, athletic conferences and other community organizations.

C. Increasing Locally Originated Programming

Third, the Commission also has determined that regional programming services further the Congressional objective of promoting "the local origination of programming." Further Notice at ¶219. Again, substantial evidence developed in the sports migration inquiry indicates that the Commission's finding is particularly applicable to regional sports networks. For example, local and regional cable networks provided over 900 telecasts of regular season National Basketball Association games during the 1992-93 season, nearly three times the number of local and regional cable network telecasts of NBA games during the 1981-82 season. See Interim Report at Appendix C, Chart 6. Likewise, local and regional sports networks provided television coverage of 1,157 regular season Major League Baseball games during the 1992 season, up from only 215 games during the 1981 season. See Erratum to Interim Report, PP Docket No. 93-21 (rel. July 12, 1992), at 1. Of course, local and regional sports networks also originate telecasts of other professional sports, collegiate and high school athletic events, and a wide variety of other sports-related programming. Thus, there can be no question that regional sports networks further the "substantial governmental interest" in promoting "the local origination of programming." See 1992 Cable Act, §2(a)(10).

* * *

Finally, exclusion of regional sports services from the channel occupancy limits is essential to restore some incentive on the part of cable operators to invest in those services and to carry them on basic or other popular service tiers where they will provide the greatest benefit to the greatest number of subscribers. As ARC explained in its Petition for Reconsideration, filed June 21, 1993 in MM Docket No. 92-266, at 6-10, the Commission's benchmark rate regulations provide strong incentives for cable operators to drop regional sports services or to shift them to a-la-carte service offerings. In addition, the prohibition against pass-throughs by cable operators of cost increases attributable to affiliated programming services affirmatively discourages cable investment in regional sports networks and substantially impairs the ability of those networks to improve their programming services.² Id. at 10-17. By failing to exclude regional sports programming services from channel occupancy limits, the Commission would simply add to these disincentives.

² Since the filing of ARC's Rate Petition, plans for at least one new regional sports network have been put on hold due in large part to the reluctance of cable operators in the region to invest in or to carry the service because of the Commission's benchmark rate regulations and the pass-through prohibition.

Consequently, ARC supports the Commission's proposal to exclude regional sports services from any channel occupancy limits because such exclusion clearly will promote each of the above public interest objectives. For purposes of implementing its proposed exclusion, the Commission should define a "local and regional programming service" as "a video programming service which: (a) is marketed and distributed to viewers in a particular community, state or multi-state geographic region rather than nationwide; and (b) originates programming of particular interest to, or sports coverage of teams located in or of particular interest to, that community, state or geographic region."

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Respectfully submitted,

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